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UNITED STATES BANKRUPTCY COURT FOR
THE EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION

In re:

BENJAMIN S. CATLIN, IV AND GAIL

CATLIN,

Debtors.

Bk. No. 09-43616 - CMK

Motion No. SPS-001

Chapter 11

**MOTION FOR RELIEF
FROM AUTOMATIC STAY
AND TO ANNUL THE
AUTOMATIC STAY**

Motion For Relief From Automatic Stay and To
Annul The Automatic Stay -
Date: March 17, 2010
Time: 10:00 a.m.
Place: Bankruptcy Court
501 I Street, Courtroom #35
Sacramento, CA 95814-7300

CIRCLE BANK, successor in interest to UMPQUA BANK ("Original Payee")
and ("Umpqua Bank") its assignees and/or successors ("Lender" or "Movant"), moves the Court
for relief from the Automatic Stay provided by 11 U.S.C. Section 362. This motion seeks an
Order terminating the Automatic Stay of 11 U.S.C. Section 362 as to moving party (and the
Trustee under the Deed of Trust securing moving party's claim). Lender seeks annulment of the
Automatic Stay retroactive to the date of filing so as to validate its Notice of Default, concerning
the real property located at 999 Grant Avenue, Novato CA, 94945, (the "Property"), recorded on

1 or about October 20, 2009 and all actions taken to affect the Notice of Default, including but not
2 limited to the mailings sent on October 27, 2009, and November 18, 2009 so that moving party
3 (and its Trustee) may take all steps necessary under State or Federal law to commence or
4 complete its foreclosure under the Deed of Trust and thereafter take possession of the subject
5 property. In addition, Lender seeks annulment of the Automatic Stay retroactive to the date of
6 filing so as to validate all actions to affect the Notice of Trustees' Sale, recorded on January 19,
7 2010, including but not limited to the mailings, postings, and/or publication of the Notice of
8 Trustee's Sale which occurred on January 19, 2010, January 21, 2010, January 28, 2010 and
9 February 4, 2010. Movant further seeks relief from stay to take all steps necessary to obtain
10 possession of the subject property and to thereafter market and sell the Property. Lender seeks
11 such relief pursuant to California Civil Code section 2924(h)(c). See In re Garner, 208 B.R. 698
12 (Bk. N.D. Cal 1997). In the alternative, if the Court will not validate the mailings related to the
13 Notice of Default and the mailings, postings, and/or publication of the Notice of Trustee's Sale,
14 Movant seeks relief from the Automatic Stay to take all action necessary under State law to
15 commence and complete its foreclosure sale of the Property and to thereafter take possession of
16 the Property.

17 Whether to grant retroactive annulment of the stay is a decision left to the
18 discretion of the Court, National Environmental Waste Corp, 129 F.3d 1052,1054 (9th Cir 1997).
19 The Court will look to whether (1) the creditor was aware of the bankruptcy filing and whether
20 (2) the Debtors engaged in inequitable or unreasonable conduct or whether prejudice would
21 result to Creditor (id. at 1055 – 1056). Here in accordance with the Declaration of PATRICK
22 MCCARTY, Movant was completely unaware of the bankruptcy at the time it published Notice
23 of Trustee's Sale. Movant's predecessor may have taken such actions because it was not aware
24 that Debtors claimed a stock ownership interest in Catlin Fuller II, LLC, the entity that owned
25 the Property, and therefore the filing of a bankruptcy did not trigger the automatic stay in respect
26 to the Property. In any event, it is unclear if the Debtors claim an interest in the Property, as the
27 value given to the asset is \$0.00. Finally, if the Debtors do not assert an interest in the Property
28 and Entitlements and Permits related to the development of the Property, there is a hearing

1 before the City of Novato, State of California, on March 22, 2010, which may determine if
2 Lender can maintain and continue with the Entitlements and Permits. Accordingly, and in the
3 absence of any interest by the Debtors or the Estate, Lender should be allowed to take all actions
4 to protect its interest in the Property and Entitlements and Permits.

5 In addition, and if applicable, Lender will seek an order waiving the requirements
6 of Federal Rule of Bankruptcy Procedure 4001(a)(3), and California Civil Code § 2924g(d), so
7 that any foreclosure sale may be held without the applicable waiting period specified therein.

8 In addition, Movant seeks relief from the automatic stay to take any steps
9 applicable to negotiate the transfer of entitlements (plans, drawing specifications, permits,
10 hereinafter ("Entitlements and Permits")) from Catlin Fuller II, LLC, which are related to the
11 development of the Property.

12 This motion is brought pursuant to 11 U.S.C. Section 362(d)(1) for "cause" and
13 due to the following:

14 1. Debtor does not own the Property. The Property is owned by Catlin Fuller
15 II, LLC. Debtors assert a 76.5% interest in Catlin Fuller II, LLC (See Debtors' Schedule B).
16 Accordingly, the automatic stay may affect Movant's right to foreclose on the Property, or
17 otherwise proceed to negotiate and finalize issues related to Entitlements and Permits related to
18 the Property. Movant does not believe that there is any value to the Property or the Entitlements
19 and Permits, which could benefit the Debtor or the estate as the Property is over encumbered and
20 it does not appear that Catlin Fuller II, LLC will proceed with development of the Property.
21 Debtors have listed the value of their interest in Catlin Fuller II, LLC at \$0.00 (See Debtors'
22 Schedule B). Accordingly, Movant asserts that the interest of the Debtors in Catlin Fuller II,
23 LLC should not be deemed to create an interest of the estate in the Property or the Entitlements
24 or Permits and therefore that they are not Property of the estate as described by 11 USC § 541, or
25 that alternatively, there is no benefit or equity of the estate in the Property, providing a separate
26 basis from relief from stay and annulment of the stay.

1 2. The failure of Catlin Fuller II, LLC to make required payments as set forth
2 in the attached Declaration of PAT MCCARTY. The failure to make required payments
3 provides "cause" for relief from the Automatic Stay.

4 3. Lender's loan fully matured on August 26, 2009.

5 In addition, Movant seeks relief pursuant to 11 U.S.C. Section 362(d)(2) and
6 alleges that in accordance with the information set forth in the attached Declaration of PATRICK
7 MCCARTY, and the Declaration of RYAN C. WARD, and due to the failure to make required
8 payments, that Debtors do not need the Property or Entitlements or Permits for a reorganization,
9 and that there is insufficient equity present in the subject real property or the Entitlements or
10 Permits to justify the continuance of the Automatic Stay. The value of the Property is
11 approximately \$2,300,000.00, pursuant to the appraisal on the Property conducted on September
12 11, 2009, attached to the Declaration of RYAN C. WARD as Exhibit "B." There are liens on the
13 Property currently totaling \$2,669,833.56. It is clear that there is no equity in the Property. In
14 addition, the Property must be essential for an effective reorganization that is in prospect (See
15 United Sav. Asso. v. Timbers of Inwood Forest Associates, Ltd., 484 U.S. 365, 376 (U.S. 1988)).
16 The Debtors have failed to file a Plan or make payments on the obligation and the Property and
17 the Entitlements and Permits are not necessary for an effective reorganization as Debtors do not
18 appear to have any interest in developing the Property.

19 In addition, Lender requests an order granting relief to finalize an agreement with
20 Catlin Fuller II, LLC. to transfer the entitlement relating to the completion of the project on the
21 property and release of the indebtedness.

22 In addition, and in the event that the Court fails to annul the stay or terminate the
23 stay, and instead continues the Automatic Stay, Movant will seek adequate protection of its
24 secured interest pursuant to 11 U.S.C. Sections 361 and 362, including a requirement that
25 Debtors reinstate all past arrearages and immediately commence regular monthly payments and
26 that Movant be allowed to take such steps as are necessary to allow the continuation of any
27 entitlements or may be required by the City of Novato, State of California, at a hearing scheduled
28 on March 22, 2010.

1 Furthermore, Movant will also seek attorneys' fees and costs incurred in bringing
2 the Motion. Movant requests such fees pursuant to the Note and Deed of Trust securing
3 Movant's claim or pursuant to 11 U.S.C. Section 506(b).

4 In addition, Movant requests such further relief as is just.

5 This Motion shall be based on these moving papers, the Relief from Stay
6 Information Sheet, the attached Declaration of PAT MCCARTY, the attached Declaration of
7 RYAN C. WARD, and the pleadings and records on file with this Court.

8 In the event neither the Debtors nor Debtors' counsel or any interested party
9 appears at a hearing on this Motion, the Court may grant annulment of the Automatic Stay
10 retroactive to the date of filing to validate all foreclosure actions taken by Movant since the
11 inception of the bankruptcy and/or may grant relief from the Automatic Stay permitting moving
12 party to foreclose on the Debtors' real Property located at **999 Grant Avenue, Novato CA,**
13 **94945**, which is legally described in the Deed of Trust attached to the Declaration of PAT
14 MCCARTY as Exhibit "G", under all defaults, including any pre-petition defaults, and thereafter
15 obtain possession of such Property without further hearing and to allow Movant to continue and
16 finalize its right to any entitlements related to the Property or may enter an order conditioning
17 the continuance of automatic stay. In addition granting the motion will allow Lender to seek and
18 obtain transfer of the Entitlements and Permits from Catlin Fuller II, LLC. **[No party in interest**
19 **shall be required to file written opposition to the Motion. Opposition, if any, shall be**
20 **presented at the hearing on the motion. If opposition is presented, or if there is other good**
21 **cause, the Court may continue the hearing to permit the filing of evidence and briefs.]**

22
23 WHEREFORE, Movant prays for judgment as follows:

- 24 1. For an order granting relief from the Automatic Stay, permitting Movant to take all
25 steps necessary under State or Federal law to commence or complete its foreclosure
26 under the Deed of Trust and thereafter take possession of the Property.
27
28

2. For and order granting relief to finalize an agreement with Catlin Fuller II, LLC. to transfer the Entitlements and Permits relating to the completion of the project on the Property.
3. Annulment of the Automatic Stay retroactive to the date of filing so as to validate its Notice of Default recorded on or about October 20, 2009 and all actions taken to affect the Notice of Default, including but not limited to the mailings sent on October 27, 2009, and November 18, 2009.
4. Annulment of the Automatic Stay retroactive to the date of filing so as to validate all actions take to affect the Notice of Trustees' Sale, recorded on January 19, 2010, including but not limited to the mailings, postings, and/or publication of the Notice of Trustee's Sale which occurred on January 19, 2010, January 21, 2010, January 28, 2010 and February 4, 2010.
5. For an order regarding adequate protection of Movant's interest as this Court deems proper.
6. For attorneys' fees and costs for suit incurred herein.
7. For an order waiving the 14-day stay described in Bankruptcy Rule 4001(a)(3).
8. For such relief as this Court deems appropriate.

SCHEER LAW GROUP, LLP

DATED: February 24, 2010

/s/ SPENCER P. SCHEER
#107750